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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,134	02/11/2005	Scott Koenig	13783-105023	1503
65989 7590 02/27/2008 KING & SPALDING 1185 AVENUE OF THE AMERICAS NEW YORK, NY 10036-4003				
EXAMINER DAHLE, CHUN WU				
ART UNIT 1644		PAPER NUMBER		
NOTIFICATION DATE 02/27/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptomailnyc@kslaw.com

Office Action Summary

Application No.

10/524,134

Applicant(s)

KOENIG ET AL.

Examiner

CHUN DAHLE

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/03/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38, 39, 41, 43, 51-80, 90, 93-107 and 111-140 is/are pending in the application.
- 4a) Of the above claim(s) 51-59, 65-80, 93-103, and 131-133 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38, 41, 43, 60-64, 90, 104-107, 111-116, 118-130 and 134-140 is/are allowed.
- 6) ☒ Claim(s) 39 is/are rejected.
- 7) ☒ Claim(s) 117 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/03/2007 and 12/04/2007.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

1. Applicant's amendments, filed on December 3, 2007, are acknowledged.

Claims 1-37, 40, 42, 44-50, 81-89, 91, 92, and 108-110 have been canceled.

Claims 111-140 have been added.

Claims 38, 39, 41, 43, 51-80, 90, 93-107, 111-140 are pending.

Claims 51-59, 65-80, 93-103, and 131-133 have been withdrawn from further consideration, as being drawn to nonelected inventions.

Claims 38, 39, 41, 43, 60-64, 90, 104-107, 111-130, and 134-140 are currently under consideration as they read on originally elected invention of an isolated antibody of clone 2B6 without conjugation that binds to native FcγRIIB with greater affinity than FcγRIIA and antagonizes at least one activity of FcγRIIB.

2. This Office Action is in response to Applicant's amendments to the claims and remarks filed on December 3, 2007.

The rejections of record can be found in the previous Office Actions, mailed on April 10, 2006, December 29, 2006, and September 24, 2007.

3. In light of applicant's amendment to the claims, the prior rejection, under 35 U.S.C. 112, first paragraph, written description, has been withdrawn.
4. In light of applicant's amendment to the claims, the prior rejection, under 35 U.S.C. 102(b), has been withdrawn.
5. In view of applicant's amendment to the claims, the prior rejections, under 35 U.S.C. 103(a), have been withdrawn.
6. In view of the amendment to the claims of the copending applications USSN: 11/305,787 and 11/108,135, the prior provisional obviousness-type double patenting rejections have been withdrawn.
7. Claim 117 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claims, or amend the claims to place the claims in proper dependent form, or rewrite the claims in independent form.

Claim 117 fails to further limit the subject matter of "a cell surface receptor" as recited in the previous claim 116. For examination purposes, claim 117 is read as depended upon claim 115.

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Appropriate correction is required.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claim 39 is rejected under 35 U.S.C. 102(c) as anticipated by Ravetch (WO 01/79299, reference B04 on IDS filed on July 15, 2005).

Ravetch teaches monoclonal antibody that specific binds human FcγRIIB but not FcγRIIA (see page 37, in particular). Further, Ravetch teaches that the anti-FcγRIIB antibody can be used as competitive inhibitors to prevent the binding of tumor specific antibody to the FcγRIIB and to amplify the effect of antibody dependent cytotoxicity (e.g. see 1st–3rd paragraphs on page 13, in particular). Furthermore, Ravetch teaches that the anti- FcγRIIB antibody can be IgG (e.g. see 2nd paragraph on page 11), humanized (see last paragraph on page 12, in particular) and single chain antibody (e.g. see 2nd paragraph on page 11). Moreover, Ravetch shows that FcγRIIB is an inhibiting receptor containing an immunoreceptor tyrosin-based inhibition motif (ITIM) in its cytoplasmic domain; engaging FcγRIIB would lead to phosphorylation of ITIM and recruitment of inositol polyphosphate 5 phosphatase SHIP, thereby prevents activation of PLCγ and abrogates calcium influx (e.g. see 1st paragraph on page 3).

Here, given the prior art antibodies have the same property of binding the extracellular domain of FcγRIIB with greater affinity than FcγRIIA; it would inherently have the ability to compete for the binding of the claimed monoclonal antibody produced by clone 2B6. Also, the Courts have held that there is no requirement that those of ordinary skill in the art know of the inherent property. See MPEP 2131.01(d) and MPEP 2112-2113 for case laws on inherency.

Moreover, although the reference is silent about the disclosed antibodies competing for binding with the claimed monoclonal antibody produced by clone 2B6 (see instant claim 42), it does not mean that the referenced antibodies do not bind the same epitope as the claimed monoclonal antibody. Since the office does not have a laboratory to test the reference antibodies, it is applicant's burden to show that the reference antibody do not compete for binding with monoclonal antibody produced by clone 2B6 and do not binds FcγRIIB with greater affinity than binding to FcγRIIA. See *In re Best*, 195 USPQ 430, 433 (CCPA 1977); *In re Marosi*, 218 USPQ 289, 292-293 (Fed. Cir. 1983); *In re Fitzgerald et al.*, 205 USPQ 594 (CCPA 1980).

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Therefore, the reference teachings anticipate the claimed invention.

10. Claims 38, 41, 43, 60-64, 90, 104-107, 111-116, 118-130, and 134-140 are allowed.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chun Dahle whose telephone number is 571-272-8142. The examiner can normally be reached on 8:30-5:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Eileen O'Hara can be reached 571-272-0878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Chun Dahle (formerly Chun Crowder)
Patent Examiner
February 13, 2008

/Maher M. Haddad/
Primary Examiner,
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